

**I.     EQUITABLE ESTOPPEL AND USE OF STIPULATION AND AGREED ORDER OF DISMISSAL: [WAC 388-08-585]****CLARIFYING INFORMATION**

Two court cases (Chaplin and Kramerevcky) established that ALJ's in Washington State may apply equitable estoppel in administrative hearings. Equitable Estoppel is a legal principle which means that, in certain cases, the ALJ can order the department to stop doing something because it is not fair to a client.

The department, in consultation with Legal Services, the Office of the Attorney General and the Office of Administrative Hearings, has developed a stipulation and agreed order of dismissal which can be used to take the place of a formal hearing and written decision by an ALJ.

Appellants may raise the issue of equitable estoppel in any hearing.

The Stipulation and Agreed Order of Dismissal should be considered for cases which meet all of the following conditions:

1.     The sole issue for hearing is the fairness of the collection of an overpayment, and
2.     Neither party (appellant or department) is disputing any fact affecting the outcome of the case. There is agreement about the amount and the facts of the overpayment; and
3.     The department is satisfied that all elements of estoppel have been established by the appellant with "clear, cogent, and convincing" evidence. This means that the fact is proven by the evidence to be highly probable.

Cases must be determined individually based on each unique set of facts. The purpose of the stipulation is to avoid unnecessary hearings. A hearing is unnecessary only when the department agrees that the appellant has established the case for equitable estoppel and the appellant agrees to the facts of the overpayment. If either party, the FHC (or other department representative) or the appellant, disputes any fact affecting the outcome of the case, a hearing should be held and a formal decision made by the ALJ.

**FHC RESPONSIBILITIES**

Review each hearing request, consulting with supervisors as appropriate, to determine if equitable estoppel is a factor. If yes, apply the following guidelines to determine if the case is appropriate for use of the stipulation and agreed order.

Guidelines for Establishment of Equitable Estoppel:

Element #1:

**An admission, statement, or act by the department, which is inconsistent with a later claim.** The department makes a statement, takes an action, or fails to act and later finds that they were incorrect. The client is informed after the fact that the error was made.

Factors which may be used as evidence of element #1:

1. The department had all the information available to correctly determine eligibility
2. The client received the benefits
3. The department has assessed an overpayment.

Element #2:

**An action by the client on the faith of the department's admission, statement or act.** The client must have taken some action that was reasonable given the circumstances; e.g. cashed the check and spent the money.

Factors which may be used as evidence of element #2:

1. The client's belief in the department's action was reasonable.

**Example:** Client receives a letter informing him that his check will be \$400. Client has reported income correctly and has no reason to suspect that the amount might be an error.

2. The benefit is no longer available. Document the facts using the best verification obtainable, including the client's statements when necessary.

Element #3:

**An injury to the client arising from permitting the department to contradict or repudiate such admission, statement or act.** The client experiences either a loss or a detrimental change in their position because the department reverses a decision regarding eligibility. Depending on the specific circumstances of the case, the imposition of a debt that could not be anticipated or avoided by the client may establish injury.

Factors which may be used as evidence of injury:

The client made financial decisions or plans based on a reasonable belief that the benefits they received were correct:

1. Spent the money on items they would not have otherwise bought and which are not an available resource.
2. Paid outstanding debts they would not otherwise have paid
3. Failed to use an available family or community resource due to the receipt of the benefits. Food Banks, help from relatives, the Salvation Army.

**Example:** The client receives TANF medical benefits for several months before the department discovers the family is ineligible. The client acted in good faith and is without fault. The family used private medical providers during the period in question based on a reasonable belief that they were entitled to medical assistance. The family did not use the free medical clinic in their town that was available and could have met their medical needs. Injury can be established based on the failure to use an available community resource.

When determining injury, the effects of non-cash benefits, such as training and childcare can and should be considered.

The appellant and the department must be in agreement regarding the establishment of injury. If the appellant and the department cannot agree on the nature or extent of the injury, the case should go to hearing.

Element #4:

**Equitable estoppel is necessary to prevent a manifest injustice.** The overpayment is clearly unfair to the client based on the way that it occurred and repayment would compromise the client's ability to meet basic needs.

Factors which can be used as evidence of element #4:

1. The client cannot repay the overpayment without drawing on funds needed for basic requirements. Document income and expenditures. Verify only questionable amounts.
2. It is clear that the client acted in good faith by following the rules required to maintain eligibility for public assistance.
  - The client reported income timely and accurately
  - The overpayment was solely due to department error
  - The client has "clean hands". That is, without fault. The client fulfilled all their responsibility to inform the department of changes in their circumstances.

Element #5:

Applying equitable estoppel will not impair the exercise of governmental powers. Element #5 will be considered to be met unless there is an extraordinary circumstance. This element must be considered on a case by case basis. The cumulative effect of equitable estoppel applied to many cases is not permitted.

## **FHC PROCEDURES**

When the appellant and the department (Financial Supervisor and/or CSOA) agree that equitable estoppel should be applied, the FHC:

1. Completes and signs The Agreed Order and Stipulation, **DSHS-EE ORDER 1/98** (currently available from CSD headquarters) and,
2. Contacts the appellant to review and sign the stipulation, and
3. Submits the stipulation to the ALJ for review and signature at least 3 days prior to

the hearing.

Although it will be best to obtain agreement for the stipulation before the hearing, it will not always be possible. The order can be done either in pre-hearing conference with the appellant (and representative) on the day of the hearing or on the record with the ALJ presiding. It will still save the time required for a complete hearing and written decision.

When the signed order is received from the ALJ, the FHC must forward a copy to the Office of Financial Recovery.